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VIA ELECTRONIC FILING

February 15, 2019

**Ex Parte Communication**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: *Ex Parte*, The Uniendo a Puerto Rico Fund and the Connect USVI Fund, Connect America Fund, ETC Annual Reports and Certifications, WC Docket Nos. 18-143, 10-90 and 14-58**

Dear Ms. Dortch:

Puerto Rico Telephone Company, Inc. ("PRTC"), by its attorneys, hereby files this *ex parte* letter to address important issues regarding Stage 2 for fixed providers in the above-referenced proceedings. The Stage 2 Fixed Fund will become the Commission's primary plan to address the serious broadband problem in Puerto Rico for what could possibly be the next decade. Therefore, it is critical that the Commission make the right decisions regarding the mechanism that will promote the Commission's goals in the most efficient manner.

**A. Eligibility to Participate in the Stage 2 Fixed Fund**

In the *Uniendo NPRM*, the Commission proposed that only providers that, according to June 2017 FCC Form 477 data, had existing fixed networks and provided broadband service in Puerto Rico prior to the hurricanes would be eligible to apply to participate in the Stage 2 Fixed Fund.<sup>1</sup> The Commission made this proposal because it believes that carriers that provided service before the hurricane would be better equipped to rebuild and expand service as quickly as possible, and because providers with established track records present a smaller risk of defaulting on their service obligations.<sup>2</sup>

Several parties in the proceeding are supportive of an approach that would permit any carrier to participate in the Stage 2 Fixed Fund. For instance, AT&T Services Inc. ("AT&T") states that if the Commission adopts its proposal for a single Stage 2 Fixed Fund, then *any* service provider should be permitted to participate regardless of whether it had an existing fixed network and

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<sup>1</sup> *The Uniendo a Puerto Rico Fund and the Connect USVI Fund, Connect America Fund, ETC Annual Reports and Certifications*, WC Docket Nos. 18-143 *et al.*, Order and Notice of Proposed Rulemaking, 33 FCC Rcd 5404, ¶ 42 (2018) ("*Uniendo NPRM*").

<sup>2</sup> *Uniendo NPRM*, ¶ 42.

provided broadband service in Puerto Rico prior to the hurricanes.<sup>3</sup> Hughes Network Systems, LLC (“Hughes”) wants satellite operators to be eligible to participate in the Stage 2 Fixed Fund even though they did not provide broadband service in Puerto Rico prior to the hurricanes.<sup>4</sup> Neptuno Media, Inc. does not want the Commission to limit eligibility to providers that served at least some residential locations.<sup>5</sup> As the Commission considers the arguments of these parties for expanding the pool of eligible participants, it must not lose sight of the extraordinary circumstances that led the creation of the Uniendo a Puerto Rico Fund in the first place.

Prior to the 2017 hurricanes, Puerto Rico had been in a severe fiscal and economic crisis for over a decade. The crisis featured an unemployment rate that is more than twice the national average, a median household income that is the lowest in the United States, and a historic population outmigration, among other factors.<sup>6</sup> Then Hurricane Maria – the most destructive hurricane to hit Puerto Rico in modern times and the third costliest hurricane in U.S. history – caused widespread devastation, further deepening the crisis in unimaginable ways. In creating the Uniendo a Puerto Rico Fund, the Commission recognized the significant devastation to the communications networks following the hurricanes, the unique challenges carriers face in carrying out recovery efforts, the need for a long-term solution, and equally important, the need for rapid action.

Given the limited nature of universal service dollars, the Commission has sought to adopt policies that will allow it to get more “bang for its buck.”<sup>7</sup> Permitting carriers that did not provide service in Puerto Rico prior to the hurricanes to participate in the Stage 2 Fixed Fund would lead to the subsidization of duplicative networks. This result would be contrary to the Commission’s policy of not subsidizing multiple networks in the same geographic area.<sup>8</sup> On the other hand, limiting eligibility to providers currently operating networks as proposed by the

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<sup>3</sup> AT&T Services Inc., Notice of Ex Parte Presentations, WC Docket Nos. 18-143, 10-90, 14-58, at p. 2 (filed Dec. 13, 2018) (“*AT&T Ex Parte*”). However, AT&T has stated that its preference would be for the Commission to have a Stage 2 Fixed Fund focused on restoration and hardening for 2-3 years, which would be available to existing facilities-based service providers for restoring and hardening facilities, followed by a longer-term Stage 3 Fixed Fund focused on broadband expansion, which would be available to any service provider. *Id.*

<sup>4</sup> Hughes Network Systems, LLC Ex Parte at p. 3 (filed Sept. 12, 2018).

<sup>5</sup> Neptuno Media, Inc. Ex Parte at p. 7 (filed Dec. 10, 2018).

<sup>6</sup> These factors are an important consideration for the Commission because they constitute a substantial hurdle to universal service.

<sup>7</sup> See Brief of the Federal Communications Commission, *In Re: FCC 11-161*, at pp. 8-9 (10th Cir. July 24, 2013) (citations omitted) (stating that “[t]he FCC reasonably predicted that it could get more ‘bang for its buck’ by providing subsidies to incumbent LECs to upgrade their extensive existing facilities than by providing subsidies to competitive ETCs, once designated, to deploy entirely new facilities. That predictive judgment is entitled to deference.”).

<sup>8</sup> See *Connect America Fund et al.*, WC Docket Nos. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 319 (2011).

Commission in the NPRM is the most reasonable and economically efficient approach to leverage existing facilities to minimize costs and accelerate the deployment of broadband.

## **B. Build-Out and Service Obligations**

AT&T argues that regardless of whether the Commission selects the municipio or the census block group as the minimum geographic bidding area, Stage 2 Fixed Fund recipients should not be obligated to serve the entirety of the geographic bidding unit.<sup>9</sup> To do otherwise, AT&T argues, would lead to overbuilding.<sup>10</sup> PRTC disagrees.

In the NPRM, the Commission proposed to make all of Puerto Rico eligible due to Puerto Rico's unique, preexisting circumstances and the widespread destruction of most critical infrastructure caused by the hurricanes.<sup>11</sup> The Commission explained that doing so would eliminate the need to establish a challenge process, enabling a more expeditious completion of the process.<sup>12</sup> PRTC agrees with this common-sense approach. Avoiding a similar situation to the CAF Phase II challenge process – which was very time-consuming, costly and administratively burdensome for all involved – is critically important given the need to restore and harden communications networks in Puerto Rico before another major hurricane strikes.

The practical reality in post-hurricane Puerto Rico is that obtaining reliable information about which census blocks are served/unserved by an unsubsidized provider will be extremely challenging and is a process that is contentious and fraught with delay.<sup>13</sup> PRTC has outlined in detail the reasons why the Commission should use municipios as the basic geographic area for Stage 2 fixed support.<sup>14</sup> By requiring that all locations in the municipio be served by the end of the funding term, the Commission would eliminate the problem of trying to determine which census blocks are served/unserved by an unsubsidized provider, which would lead to a more expeditious funding process. It should be noted that although Liberty Cablevision of Puerto Rico, LLC (“Liberty”) supports the use of census block groups as the minimum geographic area, it, too, supports requiring that providers serve the entirety of the geographic area awarded.<sup>15</sup>

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<sup>9</sup> *AT&T Ex Parte* at p. 2.

<sup>10</sup> *Id.*

<sup>11</sup> *Uniando NPRM*, ¶ 45.

<sup>12</sup> *Id.*

<sup>13</sup> *See* Puerto Rico Telephone Company, Inc. *Ex Parte* at p. 2 (filed Dec. 17, 2018).

<sup>14</sup> *Id.*

<sup>15</sup> Liberty Cablevision of Puerto Rico Reply Comments at p. 8 (filed Aug. 8, 2018).

### C. Simplicity in the Competitive Bidding Process

AT&T argues that the Commission should strive for simplicity as it designs the competitive bidding process due to the need for expediency and the reality that there are likely to be a relatively small number of service providers competing for funding.<sup>16</sup> In this regard, AT&T states that the proposals such as those by Liberty and Hughes to establish “a complex weights matrix based on speeds, latency, data usage allowance, deployment due dates, and/or resiliency service obligations” should be rejected.<sup>17</sup> PRTC agrees with AT&T that the Commission should keep the bid evaluation as simple as possible.<sup>18</sup>

Consistent with the need for simplicity and expediency, PRTC laid out a proposal whereby the Commission would give PRTC, as the incumbent, the right of first refusal (“ROFR”) to support broadband service throughout Puerto Rico in exchange for an appropriate level of support.<sup>19</sup> By giving PRTC the ROFR, the Commission will accelerate longer-term efforts to rebuild and expand voice and broadband infrastructure for the benefit of the largest number of locations in the shortest amount of time and the most economically efficient manner.<sup>20</sup> Under PRTC’s proposal, the support directed to each municipio is based on the number of locations that the Connect America Cost Model (“CAM”) determined were unserved by any carrier prior to the hurricanes.<sup>21</sup> Giving PRTC a ROFR would provide the network with the most extensive footprint on the island with the first choice in committing to bring broadband to these previously unserved locations. As a result, PRTC’s ROFR proposal does not restrict competition because even under the previous support regime the locations targeted by the ROFR did not have service to begin with.

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<sup>16</sup> *AT&T Ex Parte* at p. 2.

<sup>17</sup> *Id.*

<sup>18</sup> PRTC also agrees with AT&T that the Commission should not adopt resiliency requirements in this proceeding that are specific to Stage 2 Fixed Fund and Mobile Fund recipients.

<sup>19</sup> PRTC Comments at p. 20-21 (filed July 26, 2018); PRTC Reply Comments at p. 7 (filed Aug. 8, 2018). PRTC proposed the adoption of an additional annual budget for fixed providers of \$62 million above the existing legacy frozen support for a total of \$98 million per year. PRTC Comments at p. 15; PRTC Reply Comments at p. 16; PRTC Oct. 12, 2018 Ex Parte at p. 2.

<sup>20</sup> In the *USF/ICC Transformation Order*, the Commission offered incumbent price cap carriers CAF Phase II support for a period of five years in exchange for a commitment to offer voice across their service territory within a state and broadband service to supported locations within that service territory, subject to public interest obligations and accountability standards. *USF/ICC Transformation Order*, 26 FCC Rcd 17663, ¶ 166 (2011). The ROFR was provided to the price cap carriers because the Commission realized that the incumbent LECs already provided voice services to the remaining areas without broadband and were in the best position to expand the scope of their networks at the lowest additional cost. Nothing is different in Puerto Rico.

<sup>21</sup> *See Puerto Rico Telephone Company, Inc. Ex Parte* at p. 3 (filed Oct. 12, 2018).

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If, however, the Commission declines to adopt a ROFR approach, it should award Stage 2 Fixed Fund support through a competitive bidding process. The Commission has proposed that the winning proposals be selected based primarily on price per-location while also considering network resiliency, network deployment timing, and network performance. PRTC agrees with this proposal, provided that the Commission retain flexibility to consider the critical need for hurricane restoration and hardening as well as broadband expansion, which will undoubtedly impact the price per-location.

Please direct any questions regarding this filing to the undersigned.

Respectfully submitted,

/s/ Edgar Class

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*Counsel for Puerto Rico Telephone Company, Inc.*

cc: Chairman Ajit Pai  
Commissioner Michael O’Rielly  
Commissioner Brendan Carr  
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